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Highlights from September's Board Meeting

On September 1, 2010, the Board held a regularly scheduled meeting in Sacramento. The members heard presentations on the filing enforcement program, legislative activity, and a few budget change proposals.

The filing enforcement report highlighted the history of our efforts in this area and explained that 46 percent of nonfilers are wage earners while another 18 percent receive 1099 income. Only 14 percent are self-employed individuals. Each year, we issue nearly 1.2 million personal income tax notices and 200,000 business entity notices. Going forward, we are expanding our filing enforcement efforts for LLC and partnership entity types.

Next, our legislative director gave an update on our sponsored legislation and significant pending legislation. He stated that we analyzed 247 tax bills this year, while the average is usually closer to 165 tax bills. Sponsored legislation included a bill for innocent spouse conformity and voluntary disclosure agreements. Significant pending legislation included health care conformity and allowing taxpayers to report and pay use tax on their income tax return.

Finally, we presented three budget change proposals for 2011-2012. The first two related to our ability to enhance our compliance and taxpayer services related to our audit and contact center workloads, and the third was to replace the mainframe's central processing unit.

The next board meeting is scheduled for December 2, 2010 and is expected to include the Taxpayer Bill of Rights hearing. For detailed information, view the notice, agenda, minutes, and audio for each [Board meeting](#).

Changes to Information Return Filing Requirements

Earlier this year, Federal law expanded the filing requirements for information returns. These changes apply to payments made after December 31, 2011.

Every person engaged in a trade or business must now issue information return, Form 1099, when aggregate payments of \$600 or more per calendar year are made to corporations, other than tax-exempt corporations, for specific payments. Prior law required this only for specific payments made to individuals.

Furthermore, payments of "amounts in consideration for property" and "gross proceeds" were added to the list of specific payments subject to the information reporting

requirements. (Internal Revenue Code section 6041; California conforms through Revenue and Taxation Code section 18631.)

Recently the IRS sought public comments on how to effectively carry out the changes. (IRS Bulletin: 2010-29 dated July 19, 2010 Notice 2010-15.) The IRS intends to issue guidance to implement these changes to minimize the reporting burden and avoid duplicative reporting. We will follow this guidance.

We receive copies of federal information returns. When an information return has not been issued, we may deny deductions for amounts paid for personal services.

We may impose penalties for failure to correctly file required information returns.

Taxpayers' Bill of Rights Publication Revised

We recently revised publication FTB 4058, California Taxpayers' Bill of Rights to include the 1997 and 1999 Bill of Rights updates. With this consolidation, FTB 4063 and FTB 4064 are no longer available.

In 1988, California enacted the Taxpayers' Bill of Rights. For the first time, legislation spelled out your rights as California taxpayers as well as our obligations to you.

In response to the federal Taxpayer Bill of Rights 2, in 1997 California enacted Taxpayers' Rights Conformity Legislation. This legislation provided more protection of your rights as a California taxpayer.

To further guarantee your rights as state taxpayers, California's lawmakers enacted the Taxpayers' Bill of Rights Act of 1999.

We hope you will find this publication useful in assisting your clients with questions they may have about their rights.

To view or print the [California Taxpayers' Bill of Rights](#), go to ftb.ca.gov and search for **4058**.

New FAX Numbers for Three Key Business Areas

Beginning November 1, 2010, we upgraded the following business areas from physical fax machines to Faxination electronic fax service.

<u>Business Area</u>	<u>Old Fax Number</u>	<u>New Fax Number</u>
Tax Practitioner Hotline	916-845-6377	916-845-9300
PIT RIN Correspondence	916-845-0484	916-843-5443
Power of Attorney (POA)	916-845-0523 } 916-845-0524 }	916-843-5440

This upgrade will provide better fax quality and increased security for customer information. Incoming fax transmissions will be delivered directly to a designated electronic inbox with restricted access. In addition, this new service will provide a much greater capacity and less down time thereby increasing customer satisfaction and efficiency. Finally, this is another area where we are going “green” because Faxination transmissions are viewed electronically on agent computer screens, instead of automatically printed. This will also reduce our costs for ink, maintenance, and repair of the old machines.

While the current fax numbers will remain active until January 31, 2010, we encourage you to begin using the new electronic service immediately. Beginning February 1, 2011, the old fax numbers will be decommissioned. In the event that a fax is inadvertently sent to the old fax numbers during the filing season, we will respond with a notification to use the new fax numbers.

We will be updating fax number references in all internal/external telecom and print media with our new Faxination numbers over the next 90 days.

New e-Services

New method to access MyFTB Account:

Beginning November 2010, the way you access your clients’ MyFTB Account information will change. We will replace use of the CSN with a one-time registration process to create your tax professional login credentials. This will involve a user name and password and providing two secrets; your social security number (SSN) and

professional ID (CPA#, PTIN, EFIN or CTEC#). After successful registration, you can access your account immediately.

To view your clients' MyFTB Account information, you will login with your user name and password and enter your clients' secrets (information you already have). You should obtain your clients' permission to view their tax account information using our new form, FTB 743, Online Account View Access Authorization. Keep the authorization form signed by you and your client for your records. Do not mail the form to us.

New MyFTB Account Features:

Beginning November 2010, individual taxpayers will be able to update their address and phone number online using MyFTB Account. This service is available **only** for taxpayers who individually sign up using our new registration process (mentioned above).

Remember, if you authenticate as a tax professional, you will still be able to view information on your client's account such as payments, balance, wage and withholding, and FTB-issued forms 1099-G and 1099-INT. However, only your clients can make changes to their address.

Web Pay for Business Entities:

Also beginning in November 2010, your business entity clients will be able to make online payments with Web Pay. Corporations, limited liability companies (LLCs), and partnerships will use information from their most recently filed tax return to register for Web Pay. They can schedule payments up to a year in advance. It is free and easy. For more information, go to ftb.ca.gov and search for **Web Pay**.

Secure email

Secure email is an efficient, secure, and easy method for us to communicate confidential information to you, without installing software on your computer. Secure email encrypts the data sent to you. Regular email fails to meet our security standards to email confidential data.

We place high importance on the security of private and confidential information. To ensure emails sent from us are protected, emails sent externally may be encrypted by the sender or the department dependent upon the content of the email. Secure email cannot be initiated from an individual outside FTB. Currently, the use of secure email is limited to specialized business purposes.

One form of confidential information that we cannot send by secure email is Federal Tax Information (FTI). The IRS does not permit FTI to be sent outside FTB in **any** email, encrypted or not.

If you receive an encrypted email, please follow the instructions to open and view your encrypted email.

Example:



Does it matter how I respond to our encrypted email?

We do not require our customers to encrypt their email responses to us. We understand that some prefer to just reply from their inbox. We suggest that you protect the private confidential taxpayer data and prevent potential identity theft and respond using the **send secure** button once you have logged in.

Can I use the same user name and password for secure email with other FTB employees?

Yes. You only have to register one time. Any future secure emails from us will not require a new password. In order to reply and send information securely to us, you must first receive an encrypted email.

How do I forward a secure email?

To protect the confidentiality of taxpayer information, we do not permit the recipient to forward secure email.

I registered for secure email and did not receive an account creation confirmation email. Why?

Your account creation confirmation may have been identified as spam by your email service's junk email filter. Check your junk email inbox for the account creation email. If

you are still unable to retrieve your secure email, please contact our technical support at SecureEmailSupport@ftb.ca.gov.

Who do I contact for additional help?

Contact our technical support at SecureEmailSupport@ftb.ca.gov.

IRS Updates Employer Identification Number Application

The Internal Revenue Service (IRS) revised Form SS-4, Application for Employer Identification Number (EIN), to clearly identify the responsible party rather than nominee individuals. Effective January 2010, all mail, fax, phone, and electronic EIN applications must disclose the name and taxpayer identification number of the true **responsible party** for the entity requesting an EIN. Other key points to consider are:

- For an EIN applicant that is publically traded or is registered with the Securities and Exchange Commission, the **responsible party** is the principal officer, general partner, grantor, owner of a disregarded entity, owner, or trustor, depending on the business entity of the applicant.
- For all other entities, the **responsible party** is the person who can control, manage, or direct the entity and the disposition of the entity's funds and assets.
- A nominee is an entity with delegated authority to act in name only and can never be the **responsible party** for the Form SS-4 application.
- The SS-4 must be signed by an individual with the authority to legally bind the entity; therefore, it cannot be signed by a nominee.
- Entities that used nominees on their applications in the past should consider updating the information shown on the original application. No form is available for updating information on previous applications; instead the entity should send a letter to the IRS. Information on how to do this is included in the at the IRS' website [Updating Incorrect Business Entity Information](#).
- Third party designees filing online applications must retain a complete copy of the paper Form SS-4, signed by the **responsible party**, and a signed authorization statement, for each EIN application filed with the IRS.
- Using nominees in the EIN application process prevents the IRS from gathering appropriate information on entity ownership. It may also facilitate tax non-compliance by entities and their owners. Clearly identifying an entity's true owner makes it difficult for taxpayers to conceal their income and assets.

You can find additional information at the links below:

- [Revised Form SS-4, Application for Employer Identification Number, requires identification of responsible party](#)
- [Updating Incorrect Business Entity Information](#)
- [Change in Application for Employer Identification Number](#)
- [Use of Nominees in the EIN Application Process](#)

Updated IRS Registration Requirements for Tax Preparers

In July 2010, we posted an [article](#) about the upcoming IRS registration requirements, since the IRS made some updates to the tax preparers' registration requirements that go into effect January 1, 2011.

IRS updated PTIN Requirements:

- The annual fee is **\$64.25 per individual** and is the same regardless of whether or not you are obtaining a PTIN or re-registering an existing PTIN. The amount of the fee may change in future years as the actual program costs are periodically reviewed.
- Under the proposed regulations, compensated tax return preparers will be required to renew their PTINs **annually** and pay the associated user fee.
- Everyone must pay the fee and sign up for a PTIN using the new process, **including those preparers who already have PTINs**. Tax return preparers who already have PTINs will be assigned the same PTIN under the new system.
- If tax preparers do not obtain (or renew) a PTIN by January 1, 2011, they can still prepare returns but only after they sign up through the new online registration system, pay the fee, and obtain (or renew) a PTIN.
- PTIN is an individual preparer's number. Each preparer must obtain his or her own PTIN.

IRS updated Testing Requirements:

- Testing is expected to begin in mid-2011. Those individuals who have a valid PTIN when testing begins will have until December 31, 2013, to pass the test and may retake the test until they pass it. There will be a fee to take the test. The fee is charged each time the individual takes the test. The IRS has not yet determined the amount of the fee, the length of the test, and other test details.
- Those who need to take the test must physically go to a testing site, authenticate their identity, and take the test in person.

You can go to irs.gov for more detailed Information about these [requirements](#).

Ask the Advocate



Advisory Board Meets

The Executive Officer has an advisory board that meets at least once per year to discuss issues relating to California income tax. The Taxpayers' Rights Advocate acts as the executive secretary. The group consists of representatives from various organizations such as the California Society of Certified Public Accountants, the California Taxpayer's Association, Senate Revenue and Taxation Committee, Internal Revenue Service, Assembly Revenue and Taxation Committee and Society of Enrolled Agents to name a few. The advisory board meeting is attended by our division chiefs and subject matter experts who answer questions submitted by members in advance of the meeting. The members work

with our staff to resolve issues of mutual concern. This year's meeting took place on September 7.

Steve Sims, EA
Taxpayers' Rights Advocate

Follow our FTB Advocate on Twitter at twitter.com/FTBAdvocate.

Event Calendar

Education and Outreach			
October Events			
Date	Event Association	Subject Matter	Location
Oct 6	CSTC San Francisco	Tax Update	San Mateo
Oct 8	HAPS	California Tax law updates	San Diego
Oct 19	Inland Empire CSEA	Franchise Tax Board Updates	San Bernardino
Oct 20	CSEA Palomar Ch	Tax Update	Escondido
Oct 26	BOE	Small Business update	Imperial County
Oct 27	CalCPA Liaison Meeting	Tax Update	Sacramento
Oct 27	EZ Conference	Intro of Enterprise zone	San Bernardino
Oct 28	EZ Conference	Franchise Tax Board update	San Bernardino
Oct 29	EZ Conference	Question & Answer Session	San Bernardino
November Events			
Date	Event Association	Subject Matter	Location
Nov 8	SBSE	Small Business Updates	San Francisco
Nov 10	Coachella Valley Enterprise Zone	Enterprise Zone	Indio
Nov11	CSEA	Golden Gate Chapter Presentation	San Francisco
Nov 17	San Diego Tax & Acctg Institute	Tax Update	San Diego
December Events			
Date	Event Association	Subject Matter	Location
Dec 2nd	CSTC San Diego Tax Bridge	Tax Update	Anaheim
Dec 2nd	SBA Office	Small Business Update	Citrus Heights

Inside FTB

City Business Tax Program Expands

Our City Business Tax Program just completed its Phase II expansion. With the addition of 15 cities, the program now serves 84 cities in California.

The City Business Tax Program allows California cities to exchange data with us at no cost. Participating cities use our data to identify businesses that may have a local tax filing requirement. We use city business license data to identify self-employed individuals who may not be filing required state income tax returns. Data is exchanged through Secure Web Internet File Transfer (SWIFT)--a secured transmission which ensures the confidentiality of the data shared.

As part of the phased expansion, we created web pages dedicated to the City Business Tax program. These pages provide instruction for participating cities to exchange data and provide incentive for other cities to sign up for this mutually beneficial program. Go to ftb.ca.gov and search **City Business Tax** for more information.

The City Business Tax Program will be expanding again in December/January. Send inquiries to LocalGovtLiaison@ftb.ca.gov or call 916.845.6304.

Criminal Corner

Beverly Hills Executive Ordered to Pay \$7.8 Million for State Income Tax Evasion

A Beverly Hills man pleaded no contest to two felony counts of state income tax evasion and was ordered to pay more than \$7.8 million in restitution to the State. Ilya Chatsky, 36, was an officer of two corporations, JP Wholesale Drugs, Inc. and Megatrade, LLC, that were engaged in the buying and selling of pharmaceuticals. According to court documents, Chatsky earned more than \$12.8 million in unreported income during 2003 – 2006 and his businesses earned more than \$37.3 million combined in unreported income during these same years. Chatsky failed to report this income on his personal and corporate state income tax returns for the same period.

Our special agents reconstructed Chatsky's income based upon information obtained through search warrants executed at his residence and at financial institutions.

The restitution represents the unpaid tax, penalties, interest, and the cost of the investigation. Chatsky has paid \$505,906 toward this amount. Chatsky was also given five years formal probation and ordered to serve 270 days of CalTrans work.

The underreporting of income is part of the \$6.5 billion tax gap now facing California. The tax gap is defined as the difference between the tax that is owed and the tax that is paid.

Los Angeles County Superior Court Judge Stephen Marcus handed down the sentence in Department 132 of the Clara Shortridge Foltz Criminal Justice Center. Los Angeles County Deputy District Attorney Amy Suehiro prosecuted the case. Through joint efforts, we developed this case with the Los Angeles County Sheriff's Department.

Big Business

Suspension and Revivor 101 - Part 3

So far we have discussed how a corporation or LLC becomes suspended or forfeited, and how to revive them back into compliance. In this article, we discuss three penalties that are closely associated with suspension and forfeiture.

Secretary of State Penalty (CR&TC 19135)

The Secretary of State (SOS) imposes a penalty for failure to file:

- Statement of Information by Domestic Stock Corporation annually.
- Statement of Information by Foreign Corporation annually.
- Statement of Information by Domestic Non-Profit Corporation every other year (biennially).
- Statement of Information by Domestic or Foreign LLCs every other year (biennially).

The penalty amount varies depending on the business entity:

- Domestic and foreign corporations - \$250.
- Domestic and foreign limited liability companies - \$250.
- Domestic nonprofit corporations - \$50. (This amount applies for any entity incorporated as a nonprofit corporation, whether or not the corporation is tax-exempt.)

Interest is not charged on the SOS penalty or allowed on the refund of an SOS penalty payment.

We only collect the penalty for SOS. To have the penalty waived, you must contact the SOS directly. SOS does notify us when they waive the penalty. It takes us 30 to 90 days from the date of the SOS letter to update our files for the abatement. You can contact SOS at:

CALIFORNIA SECRETARY OF STATE
STATEMENT OF INFORMATION
PENALTY UNIT
PO BOX 944230
SACRAMENTO CA 94244-2300
916.657.5448

sos.ca.gov

Be aware there are several business scams being operated by private companies advising business entities to file their Statements of Information by submitting fees and documents to them rather than filing them directly with the SOS. For information regarding these scams go to the SOS website.

NonQualified, Suspended, or Forfeited Penalty (CR&TC 19135)

We impose a \$2,000 penalty per tax year on nonqualified, suspended, or forfeited corporations doing business in California, if they do not file a tax return within 60 days after we send them a legal demand (i.e. FTB 4684 or FTB 4685) to file their corporate return. The penalty is in addition to the demand and delinquent penalties and the filing enforcement fee. The penalty does not apply to limited liability companies.

We charge Interest on the penalty from the original notice date of the penalty assessment to the date paid.

The penalty may be waived for reasonable cause. To request a penalty waiver you must submit a written statement with supporting documents listing the facts that support reasonable cause exists.

Demand Penalty (CR&TC 19133)

We impose a demand penalty if a corporation or LLC (not classified as a corporation) does not file a tax return after we send them a formal legal demand (i.e. FTB 4684 or FTB 4685) to do so. The demand penalty also applies to individuals. In this article, we only discuss the demand penalty for business entities and their failure to file a return.

The amount of the demand penalty is 25 percent of the lesser of the tax shown on the:

- Notice of Proposed Assessment (NPA), **before** applying any payments or credits or

- The tax shown on the return **before** applying any payments or credits.

If the corporation or LLC (not classified as a corporation) files its original return after the NPA goes final and the tax on the return (before refundable credits) is less than the proposed assessed tax, we will reduce the penalty. Please note that since the penalty is computed before applying credits and payments, your entity may owe penalty and interest even if the tax return shows that a refund is due.

We charge interest on the penalty from the NPA issue date to the payment received date.

The penalty may be waived for reasonable cause. To request a penalty waiver submit a written statement with supporting documents listing the facts that support reasonable cause exists.

Next month, in the final part of the series, we will cover contract voidability and the relief of contract voidability penalty.